

TED Case Studies # 2 [<http://www1.american.edu/TED/shrimp.htm>]

Shrimp and Sea Turtle Case

CASE MNEMONIC: SHRIMP

CASE NAME: Shrimp and Sea Turtle Protection

1. The Issue

The *Earth Island Institute*, a San Francisco-based environmental organization, filed a lawsuit in February 1992, to force the U.S. Departments of State and Commerce to comply with the Federal law requiring the ban of shrimp imports from countries that endanger sea turtles through shrimp fishing. The law is being applied to countries with shrimp operations in the Caribbean and the western central Atlantic. The *Earth Island Institute* believes that the law should be extended to Pacific and Indian Ocean nations such as Japan, Thailand, Indonesia, India, Malaysia, and South Korea, as well as Mexico and Brazil. Countries currently operating under the law only account for ten percent of the world's annual shrimp harvest; the major threats to the sea turtles are posed by nations not required to abide by the U.S. law.

2. Description

Five species of sea turtles are protected under the 1973 *Endangered Species Act (ESA)* and the *Convention on International Trade in Endangered Species (CITES)*: the hawksbill, green, leatherback, ridley and loggerhead sea turtle. Large numbers of dead turtles washing ashore on beaches cause great concern among environmental groups. After studying the problem of shrimping methods affecting sea turtles for ten years, the *National Marine Fisheries Service (NMFS)* concluded that "drowning in shrimp trawls is considered the greatest threat to the turtles' survival." NMFS estimates that over 11,000 turtles drown in U.S. trawl nets each year.

To combat this problem, the *NMFS* developed the turtle excluder device, commonly known as the TED. TEDs are simply a cage-like structure that fits in the neck of a trawl net, preventing turtles and large fish from being caught. Since the turtle cannot pass through the cage, it is forced upward through an escape hatch. Studies by the *NMFS* on shrimp boats found the device to be 97 percent effective, only reducing shrimp catch by 2 percent. In order to promote conservation of the turtles, the U.S. passed a Federal law in 1987 which was later amended in December 1992. The *NMFS* intensified the regulations by requiring "that most shrimp[ers] operating in offshore waters...use the devices immediately...and those using smaller boats in offshore and in-shore [areas] will have to use them within two years."

To complement these measures to protect sea turtles, the U.S. passed *Public Law 101-162* in November 1989. *Section 609* of that law requires the ban of shrimp from nations that do not take precautionary measures to protect the sea turtles. The Secretary of State must inform the countries of U.S. law (and the international *CITES* treaty) protecting the turtles and negotiate treaties encouraging similar shrimping practices. The law provides that the country must "receive certification that it has met specific conservation requirements" if it is to continue exporting shrimp to the United States. In May 1991 it became illegal to import shrimp into the U.S. from a country without certification.

Certification requires proof that a country has adopted "*a regulatory program comparable to the US program or...that the fishing environment in its waters does not pose a threat to sea turtles.*" Implementation of TEDs is encouraged; by May 1994 "*the nations affected by this law must require the use of TEDs on all shrimp vessels...or their exports of shrimp to the US will be embargoed.*"

The *Earth Island Institute* filed a lawsuit in February 1992 against the U.S. government. They argued that "*the defendants failed to certify...that all shrimp harvesting nations have regulatory programs and incidental taking rates of endangered sea turtles comparable to those in the US.*" Specifically, *Earth Island* claims that India, Indonesia, Thailand, Japan, Mexico, Malaysia, South Korea and Brazil, who are the largest shrimp exporters to the United States, are among the dozens of countries "*whose fishing fleets...kill more than 150,000 turtles a year.*" *Earth Island* also argues that the U.S. government is required by law to negotiate treaties with those countries and encourage the use of TEDs for conservation. The effectiveness of the law is undermined when only Caribbean and Atlantic countries must abide by the regulation. Mexico, in response to the *Earth Island Institute* lawsuit against the U.S. government, and fearing an embargo similar to that of Mexican tuna exports to the United States, announced in May 1992 that it too would require protection of sea turtles. India, Indonesia, Thailand, Malaysia and others argued the U.S. sea turtle protection law violates the GATT / WTO trade agreement.